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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 168th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 November 1993, at 10 a.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.168/Add.1.

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Cyprus (CAT/C/16/Add.2)

1. At the invitation of the Chairman, Mr. Macris, Mr. Stavrinakis and Mrs. Markides (Cyprus) took seats at the Committee table.

2. Mr. MACRIS (Cyprus), introducing the report, said that the protection of human rights was a matter of high priority to the Government of Cyprus. The Constitution of the Republic, which was based on the Rome Convention of 1950 and the Optional Protocol to that Convention of 1952, contained clear legal definitions of human rights and fundamental liberties and provided for effective ways of enforcing them. Cyprus had, moreover, acceded to all the international human rights instruments for which treaty bodies had been established to monitor implementation. Those instruments included the European instruments on human rights and the Convention against Torture, whose provisions Cyprus had accepted unreservedly, enacting laws and applying effective administrative and judicial measures to prevent torture in its territory. Cyprus also participated actively in the Working Group entrusted with the task of preparing a draft optional protocol to the Convention against Torture, which was designed to prevent torture in places of detention.

3. A bill was about to be submitted to the House of Representatives to clarify the functions of the Commissioner for Administration (Ombudsman) competent to investigate allegations of human rights violations. In future, assuming that the bill was passed, the Commissioner would submit a report to the Council of Ministers, the House of Representatives and the Attorney-General if he concluded that a violation under investigation amounted to a criminal offence. There would then be no possibility of a cover up, given the clear separation of powers that existed in Cyprus. Another significant development, which demonstrated the Government's resolve to investigate allegations of ill-treatment by officials and to prevent such conduct, had been the establishment of a Commission of Inquiry authorized to investigate police methods with particular reference to complaints about torture and ill-treatment. Similarly, the trial of two police officers in which the Deputy Attorney-General himself had appeared for the prosecution and which had been referred to in the initial report had also shown that the Government was serious in its intention to bring persons accused of torture to justice.

4. Referring to article 2, paragraph 1, of the Convention, he drew attention to the fact that the information given in the report pertained only to the territory under the effective control of the Government of Cyprus, which could therefore not vouch for the implementation of the Convention in the territories still under Turkish control.

5. In conclusion, he commended the excellent way in which the Committee against Torture was performing its important task of ensuring observance of the provisions of the Convention.

6. Mr. BURNS (Country Rapporteur) thanked the presentative of Cyprus, Mr. Macris, for his introduction and said that it was heartening to encounter a legislative and administrative framework so clearly designed to protect human rights. Cyprus was to be complimented in taking its commitments in that area so seriously. He also commended Mr. Stavrinakis for discharging his extensive responsibilities as Cypriot Law Commissioner so capably and added that his own experiences in a similar post had made him familiar with the difficulties inherent in a position with so wide a frame of reference.

7. The report by Cyprus had been submitted 10 months late, but was, in his view, a model of the type of report which the Committee wished to see. It closely followed the Committee's guidelines and thus made the work of the Committee more efficient. It showed Cyprus to be a small, modern and prosperous democracy that was fully committed to human rights and had subscribed to all the international human rights instruments, including their optional provisions. That suggested considerable confidence on the part of the Government that its conduct in the field of human rights could withstand international scrutiny.

8. He noted with satisfaction that, unlike most States which had ratified the Convention against Torture, Cyprus had incorporated the definition of torture contained in article 1 of the Convention into its own legislation by virtue of Law No. 235 of 1990 (para. 41 of the report), making torture a separate crime for which specific penalties were prescribed. Indeed, the definition of torture adopted under Law No. 235 appeared to go further than that of the Convention by including a specific reference to "systematic torture" and thereby giving a clear warning to any person who perpetrated torture in an official capacity of the penalties he was likely to incur.

9. In other respects, too, Cypriot legislation appeared to provide very effective safeguards of human rights. Referring to paragraph 53, he noted with satisfaction that "superior orders" could not be invoked as a defence against an allegation of torture. Article 28, paragraph 1, of the Constitution, concerning the principle of equality before the law, embodied the most modern constitutional safeguards seen anywhere in the world. Statements obtained by torture (para. 103) were inadmissible in court.

10. He nevertheless had a few questions and comments. Referring to paragraph 46, he wished to know whether the Prisons' Council produced an annual public report. Were the prison regulations governing the conduct of prison officers subject to regular review?

11. He noted that, while the Constitution guaranteed "the right to life and corporal integrity" (para. 6), capital punishment had been retained for a number of offences. He wanted to know what type of capital punishment was used and how often it had been applied, if at all, since independence and under what circumstances.

12. Referring to article 8 of the Constitution, which enshrined the right of a person not to be tortured or subjected to inhuman or degrading treatment or punishment, he noted that it used the same language as found in the

United Nations and European Conventions. Liberty and security of person were protected by article 11 of the Constitution, which included some of the most up-to-date safeguards in the area of arrest and detention. He took note with particular approval of the requirement that a detained person must be brought before a judge no later than 24 hours after his arrest, and the right of a detained person to legal counsel upon arrest and to be advised of that right and of the limits placed on remands in custody. Those provisions were, in legislative terms, beyond reproach. However, he felt that the provision of article 11, paragraph 2 (e), (para. 9 of the report) on the detention of alcoholics, drug addicts or vagrants, or to prevent the spread of infectious disease, required explanation: what limits were placed on detention in such cases? Was AIDS considered to be in the category of infectious diseases which might be invoked as grounds for detention?

13. The distinction between self-executing and non-self-executing provisions of international instruments, as explained in section I.B. of the report, was, in his view, an appropriate way of dealing with such international instruments. He would like confirmation that most of the provisions of the Convention, namely, those which imposed obligations or conferred rights, were self-executing under the definition used in the report and thus required no specific legislation to be incorporated into domestic law.

14. According to paragraph 52, no state of emergency had ever been declared since independence, but he wished to know what the effect of such a state of emergency would be, bearing in mind that, under article 2 of the Convention, a state of emergency could not be invoked as grounds for suspending the prohibition on torture.

15. It was his understanding that articles 3 to 8 of the Convention were self-executing in the light of the definition used in the report and thus part of domestic law. If that was so, he wished to know why legislation was needed to ensure universal jurisdiction (para. 64).

16. The measures described in the report (para. 77 et seq.) to implement the provisions of article 10 of the Convention relating to education and information were commendable as far as they went, but he wished to know whether doctors were being trained to recognize the signs and sequelae of ill-treatment and torture.

17. While welcoming the establishment of a Complaints Committee (paras. 82 et seq.) to investigate allegations of ill-treatment by public officials as an efficient way of dealing with complaints, he thought that the members of the Complaints Committee, being predominantly police officers, might not be perceived to be totally independent.

18. The prosecution of two police officers for acts of torture had probably been the first instance of such a trial pursuant to the Convention and demonstrated a genuine will on the Government's part to suppress such conduct.

19. Referring to paragraphs 93 to 96, he said that he regarded the private citizen's right to complain to the Commissioner for Administration and to

initiate criminal proceedings against an alleged torturer as powerful weapons in the defence of the citizen's basic rights. He also noted that a criminal injuries compensation scheme was being set up and asked when it would be in operation.

20. He found it interesting that the office of Law Commissioner combined a number of different functions, including those of oversight and law reform. It thus appeared to have a wider role than the equivalent office in other Commonwealth countries and also tended to confirm that the Government was serious in its intention to implement the provisions of the Convention.

21. He drew the attention of the Cypriot delegation to a number of specific allegations which had come to light as a result of the illicit publication in a September issue of the Cyprus Weekly of parts of the leaked draft report of the European Committee for the Prevention of Torture (CPT). At its visits prior to drafting the report, CPT had heard numerous allegations of serious ill-treatment and torture of persons detained by the police. Those allegations related mainly to Limassol Town Police Station, but also to Larnaca Town Police Station and, in some less recent cases, to Nicosia. The allegations made to the CPT delegation showed a high degree of consistency as to the types of torture used, which included suspension by the legs, electric shocks and blows with clubs and truncheons, and the circumstances under which it had allegedly been inflicted, which had generally involved interrogation at night, the wearing of hoods by police officers and victims, and verbal abuse.

22. Medical evidence obtained by the CPT delegation had also tended to corroborate the allegations and information received by ad hoc complaints committees and discussions with groups such as the Legal Committee of the House of Representatives had suggested that the ill-treatment of persons in police custody was a serious problem. CPT had concluded that persons held at certain police stations ran a serious risk of ill-treatment or torture and had expressed its reservations concerning the system of holding remand prisoners in police premises for long periods, as opposed to prison establishments.

23. In the light of the allegations to which he had referred and which were now in the public domain in Cyprus, he wished to know what conclusions had been reached by the Commission of Inquiry set up in response to the allegations and what other action had been taken.

24. He then referred to the specific case of Mr. Lykourgos Vassiliou, which had also been published in the Cyprus Weekly. Mr. Vassiliou had apparently suffered serious injuries at the hands of police officers who had arrested him, although they had claimed that the injuries resulted from a fall. He wished to know what the Government's response had been to the case and what penalties, if any, had been imposed on those responsible for his injuries.

25. He would also like to know how the appointment of judges took place and how judges could be dismissed and whether he was correct in his assumption that there were no jury trials in Cyprus.

26. He noted an apparent contradiction between the statement in the report by the European Committee for the Prevention of Torture that people could be

detained in police stations and paragraph 44 of the report of Cyprus, which stated that persons awaiting trial were held in prisons, and asked whether the Cypriot delegation could explain the discrepancy.

27. In conclusion, he drew the attention of the delegation to a comment made by a senior police officer which had also been reported in the Cyprus Weekly. In reply to the allegation by a defence lawyer that police brutality was a common occurrence, the officer in question had denied that excessive brutality ever took place, while admitting that prisoners might receive "a slap or two" when being interrogated. Such a public admission by a senior police officer was, in his view, disquieting and suggested that more stringent oversight of police activities might be required.

28. Mr. EL IBRASHI (Alternate Country Rapporteur) expressed his appreciation of the efforts made by the Government of Cyprus to fulfil its obligations under the Convention.

29. With regard to paragraph 34 of the core document on Cyprus (HRI/CORE/1/Add.28), he asked what was meant by "a neutral President". Paragraph 39 of the core document referred to the creation by the Administration of Justice Law of 1964 of a new Supreme Court which had taken over the jurisdiction of both the Supreme Constitutional Court and the High Court. Were the two courts now incorporated into one and how did the system work?

30. As to paragraph 53 of the core document and paragraph 106 of the initial report, he welcomed the establishment of the post of Law Commissioner, asked how he was appointed and what role he played in the practical implementation of the Convention.

31. He wished to know whether the non-governmental organizations mentioned in paragraph 55 of the core document were national or international. How did Amnesty International, for instance, cooperate with non-governmental organizations in Cyprus? Did non-governmental organizations report to the Government? To whom could non-governmental organizations report cases of alleged violations of the Convention? What authority did they have? Could they visit prisons and make inquiries?

32. He wished to know how the Commissioner for Administration (Ombudsman) mentioned in paragraphs 20, 93 and 94 of the report was appointed and how many cases he had referred to the Attorney-General.

33. He would like some clarification of the last sentence of paragraph 53 of the report, since he failed to understand how a civil servant could be obliged to comply with an illegal direction if his superior had insisted on the basis of the opinion of the Attorney-General. Was that opinion sought in advance?

34. In connection with paragraph 64 of the report, he, like Mr. Burns, wished to know why Cyprus was considering taking measures to extend its jurisdiction over offences committed abroad, since the Convention was directly applicable. Was new legislation required or could the provision of article 8 be applied automatically?

35. With regard to paragraph 90 of the report, he asked what cases had been investigated by the ex-judicial officer appointed by the Council of Ministers, what his functions were and whether he had replaced the Complaints Committee or whether it still existed.

36. He requested clarification of paragraph 95 of the report, which stated that a citizen had the right to institute himself criminal proceedings against a person who had allegedly tortured him, if for any reason no criminal proceedings had been taken against that person. Such a procedure would be quite normal in the case of a complaint, but perhaps something else was involved.

37. He was happy to note that, as stated in paragraph 56 of the core document, the role of the mass media in the promotion and protection of human rights was considerable. The independence of the press was well attested by the report in the Cyprus Weekly referred to by Mr. Burns and he too would be interested in hearing the Cypriot delegation's view of the cases Mr. Burns had mentioned.

38. Mr. BEN AMMAR, referring to paragraph 29 of the report, asked for some information on the tasks of the Ministry of Justice and Public Order and said that he wished to know whether, in certain circumstances, the functions of justice and public order might not be incompatible with and infringe the democratic principle of the separation of powers.

39. With regard to the penultimate sentence of paragraph 89, why had the case where a criminal offence appeared to have been committed been discontinued?

40. In connection with the last sentence of paragraph 96, which read: "The court may give directions for the investigation of the complaint and further direct that the complainant be examined by a doctor", he pointed out that, under the terms of the Convention, the court was in fact required to order an inquiry: that was not merely an option.

41. Mr. MIKHAILOV said that he agreed with Mr. Burns' comments on the excellence of the report.

42. With regard to paragraph 5, he asked whether the legislative, executive and judicial authorities were in fact independent of each other or whether the executive could influence the judicial authority.

43. With respect to paragraphs 25 et seq., he asked who appointed the Attorney-General and to whom he was responsible. Was there any judicial control over the Attorney-General's actions, since it was stated in paragraph 68 of the report that all prosecutions came under his authority and control? Did he depend in any way on the executive?

44. In paragraphs 11 to 13 of the report, it was explained that international conventions were separated into two categories, those that were self-executing and those that required legislative, executive or administrative action. He wondered why the question was not settled by the Constitution and asked

whether there was any intention of changing the Constitution and whether the Supreme Court's decision mentioned in paragraph 13 had given rise to any practical difficulties.

45. Paragraph 6 of the report referred to article 7, paragraph 2, of the Constitution, which stated that a law might provide for the death penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law. However, that provision was inconsistent with the statement in paragraph 24 that the death penalty for premeditated murder had been abolished and mandatory life imprisonment substituted. Had the Constitution been changed? How was the provision for life imprisonment implemented?

46. With respect to paragraphs 99 to 102 of the report, he noted that there was a general rule that the Government was responsible for the acts of its agents in the exercise of their functions. He asked for further details of remedies and compensation for victims of torture, the difference between general and special damages and the legal mechanism by which compensation was granted.

47. The CHAIRMAN, referring to paragraph 11 of the report, asked how the provision for reciprocity in article 169, paragraph 3 of the Constitution could apply to multilateral treaties and, in particular, to the Convention against Torture.

48. With respect to paragraph 14, he welcomed the fact that articles 3, 6, 7 and 8 of the Convention were self-executing. He also welcomed the promulgation of a special law making torture a criminal offence.

49. Concerning paragraph 64, Mr. Burns had asked whether article 5 on the extension of jurisdiction was not self-executing, but the article was rightly not mentioned in paragraph 14 of the report, since it did not order any measures, but merely referred to domestic legislation. The necessary measures should therefore be taken as soon as possible. He would, however, be glad to hear the view of the Cypriot delegation on that point.

50. On paragraph 74, he considered that, because article 8 of the Convention was self-executing, it was unnecessary to amend the law.

51. In connection with paragraph 79, which mentioned education and training for police officers, he asked whether judges and military and medical personnel were given any similar training, as required by article 10 of the Convention.

52. Referring to paragraph 81, he asked how the systematic review of interrogation rules required by article 11 of the Convention was carried out.

53. In connection with paragraphs 89 and 92, which mentioned cases of complaints of ill-treatment, he wished to know the results of the proceedings and the penalties imposed, if not at once, then in the next periodic report.

54. With regard to paragraphs 99 to 102, he requested further information on how damages were awarded, especially to the class of dependants that had been widened by the amendment to the Civil Wrongs Law. Did the damages cover loss of support by the father of a family, for instance? Had there been any cases in which such damages had been awarded and what had the amount been?

55. In connection with paragraph 105 of the report, he asked whether there was still corporal punishment in Cyprus.

56. He would welcome information on cases reported in the press, either orally or in the next report.

The public meeting rose at 11.40 a.m.